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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,274	03/27/2001	Wayne Edward Beimesch	390780	6754

7590 01/29/2003  
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EXAMINER

ROGERS, DAVID A

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/806,274

Applicant(s)

BEIMESCH, WAYNE EDWARD

Examiner

David A. Rogers

Art Unit

2856

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).


1. ☒ A Notice of Appeal was filed on 14 January 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_
- Claim(s) objected to: \_\_\_\_\_
- Claim(s) rejected: \_\_\_\_\_
- Claim(s) withdrawn from consideration: \_\_\_\_\_
8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

As for claim 1, the applicant intends to distinguish the claimed method over the prior art by the use of a closed system as the source of the material containing volatile organic compounds (VOCs). U.S. Patent 5,140,845 to Robbins clearly shows a bag into which a material comprising VOCs is placed. The bag is then sealed and the headspace allowed to reach equilibrium. A flame ionization detector (FID) is then used on a sample of the air in the headspace to determine the existence of VOCs. It is clear that Robbins discloses that the material to be tested is earth that has been exposed to VOCs from a secondary source. Furthermore, it is clear from the method used to test for VOCs that the source of the material is highly independent of the testing method. That is, once placed in the bag, the steps of reaching equilibrium, sampling, and the use of the FID are independent of the source of the material. Additionally, the applicant has not shown how the device of Robbins would not operate if used with material that is from a different source, such as a kiln dryer or other "closed" system. Finally, given the simple fact the the existence of VOCs in any material is well known to be hazardous to those handling that material, one of ordinary skill in the art would clearly recognize that the device of Robbins would be useful in a method to test for VOCs from material from any source.

As for claim 8, the applicant intends to distinguish the claimed apparatus over the prior art by the use of a resealable bag to store VOC-containing material. This is the intended use of the claimed bag and, as seen in the final rejection, has not been considered by the examiner. Bags are well known to be capable of storing a myriad of different materials. Polypropylene bags, as disclosed but not claimed by the applicant, in particular exhibit sufficient strength and durability to store foods, articles, or even VOC-containing materials, as seen in Robbins. U.S. Patent 4,930,906 to Hemphill discloses a bag that is resealable and comprises instructions to use the bag. Clearly one of ordinary skill in the art would provide instructions to use a bag that are specific to the intended use. Furthermore, one of ordinary skill in the art, especially in light of the teachings of Hemphill, would clearly know that any bag, including polypropylene bags, can be provided with an instruction sheet to form a "kit" as claimed by the applicant to inform an intended user on how to store and then test VOC-comprising material.

  
DANIEL S. LARKIN  
PRIMARY EXAMINER